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In re Application of	:	
EPLER, Frederick A. et al.	:	
Application No.: 09/807,779	:	DECISION
PCT No.: PCT/US98/22051	:	
Int. Filing Date: 19 October 1998	:	ON PETITION UNDER
Priority Date: None	:	
Docket No.: B-4141PCT 618624-4	:	37 CFR 1.10(d)
For: ENHANCED CALL WAITING	:	

This decision is in response to applicants' "Petition Under 37 CFR §1.10," filed 15 October 2002.

BACKGROUND

On 19 October 1998, applicant filed international application PCT/US98/22051. A demand for international preliminary examination was filed on 16 May 2000. Accordingly, the thirty month period for paying the basic national fee expired at midnight on 19 April 2001.

On 18 April 2001, applicants filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, the basic national fee.

On 19 July 2001, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

Applicants submitted a declaration of the inventors. It was accorded a receipt date of 19 September 2001.

On 11 October 2001, the Office mailed Notification of Acceptance (Form PCT/DO/EO/903) indicating that the application satisfied the requirements of 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) on 19 September 2001.

On 15 October 2002, applicant submitted the instant petition, accompanied by a copy of the postcard, Express Mail label, a letter from USPS and a Pickup Service Statement.

DISCUSSION

In the instant petition, applicant requests that the receipt date be amended to 18 September 2001. The Express Mail mailing label lists the "date in" as 19 September 2001.

Applicant argues that the application was submitted to the USPS on 18 September 2001. 37 CFR § 1.10(d) allows an applicant to petition to correct an incorrectly entered "Date In" of an Express Mail receipt and states that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1), (2) and (3). The petition was filed promptly and the papers in the file reflect the mailing label number. Applicant has furnished a Pickup Service Statement for Express Mail, signed by a USPS employee indicating the package was picked up on 18 September 2001 and has submitted a letter on USPS stationery from a Manager at the Bicentennial Station, indicating the same.

CONCLUSION

For the reasons listed above, applicant's petition under 37 CFR 1.10(d) to correct the date of receipt of the papers to 18 September 2001 is **GRANTED**.

The Notification of Acceptance (Form PCT/DO/EO/903) mailed 11 October 2001 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including mailing of a corrected Notification of Acceptance and corrected filing receipt. The application should then be forwarded to the Certificates of Correction Branch for the issuance and mailing of a Certificate of Correction. The application has a date of 18 September 2001 under 35 U.S.C. §371 (c)(1), (c)(2) and (c)(4).

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